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JAMES H. McKENNEY,
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No. 243.

Reply Br. of Campbell for Pet'rs

IN THE

# Supreme Court of the United States

Filed April 11, 1899.

OCTOBER TERM, 1898.

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*No. 243.*

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AMEDEE D. MORAN ET AL.

*vs.*

CHARLES DILLINGHAM.

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## REPLY TO RESPONDENT'S BRIEF.

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This brief will be confined to a reply to the argument of respondent's counsel on the merits. We refer the court to our former briefs for a full discussion of the question as to whether Judge Pardee was recused.

Counsel for respondent accept in their Brief, page 6, our statement of the law as to the value of reports of masters in chancery. They say they are "entitled to every reasonable presumption," and that "his report is not to be set aside or modified unless there appears to have been error or mistake on his part." Now, while this is in substance the rule, and while counsel apparently agree with us, they have failed to state the rule as forcefully as the decisions of this court require.

These findings of fact by a master, when confirmed by the trial court, "are conclusive in the absence of anything to show that they are *unsupported by the evidence*" (Davis vs. Schwartz, 155 U. S., 631).

This rule is the only true and logical one for courts of appeal; or, in other words, for courts of review, as distinguished from trial courts. The duty of the trial court is to weigh and sift the evidence. They have opportunities to do this superior in every sense to a court of review. Upon the other hand, it is no part of the duties of courts of review to sift or weigh the evidence. They could not do so with any satisfaction to themselves for lack of proper knowledge of the witnesses—their manner of testifying, &c.—so essential to a proper performance of this duty; so the court of review confines its investigations to such examination of the evidence as will determine whether there is any testimony in the record to support the findings of the master. When this duty is performed the review court has fully met the requirements of the rule. To stop at this point is to perform the full duties of an appellate court. To go beyond that point and to undertake the task of sifting and weighing the testimony is not only a radical departure from the rule, but is an intrenchment upon the duties of the master and trial court. In no instance, so far as we know, has this court done this, but has invariably halted when it came to the limits prescribed by the rule. The true and only question, therefore, on the merits of this case is whether there is any evidence in the record supporting or tending to support the master's findings of fact. We briefed our case from this standpoint and showed (our Brief, pages 14 to 33) that there was ample testimony to support the master's findings. We will not repeat

what we say there; but by turning to the brief of respondent's counsel it will be seen that while they agree with us as to the law of the case, they nowhere claim or assert that the findings of the master are without evidence to support them. There is not to be found in their brief any such contention. They assert that the master erred and made a mistake in reporting the facts, and they discuss the evidence on several issues and claim that the evidence preponderates in favor of respondent; but they in no part of their brief contend or even claim that evidence is lacking to support the findings. The effect of respondent's brief is but a request to this court to overrule its decisions, limiting the inquiry in such cases, and to retry the case on the merits—to sift and weigh the testimony of each witness; and it is upon the idea that this will be done that counsel have prepared their brief, and they present no other phase of the case. Respondent's case is presented here in exactly the same manner it was presented before the master and the trial court. Please see what is said in their Brief, pages 6 to 15. Now, while we do not in the least dread an examination of all the evidence by this court, we insist that we are entitled to the full benefit of the rule, and that the master's findings are conclusive unless without evidence to support them. Now, as respondent's counsel concede the existence of this rule, but have not shown or attempted to show that the findings are without support from the evidence, and as we have shown that they are clearly supported by the evidence, the decree of the appeal court ought to be reversed and that of the circuit court ought to be affirmed.

But if this court should disagree with us and conclude

that it is its duty to go through the evidence and weigh and sift the testimony of each witness, we invite the court's attention to the evidence as printed in the record and all the other proceedings found in the record. In particular, attention is called to our Brief, pages 10 to 33, where we discuss the merits and go over the evidence and show, we think, clearly that the evidence preponderates in favor of the master's findings. Please also see our review of the opinion of the court of appeals, pages 33 to 47. It will be seen by reading what we say there that every argument made by respondent's counsel has been anticipated and fully met. We will not burden the court with a restatement of the arguments there made.

Respectfully submitted.

L. W. CAMPBELL,
*Solicitor for Petitioners Moran, Gold, and McHarg.*